

HERCULES MARINE SERVICES CORPORATION
CASE NUMBER CR-FY97-058
SUMMARY PRESENTATION TO
TEETF COMMITTEE
OCTOBER 23, 1997

HERCULES MARINE SERVICES CORPORATION

HISTORY

- Facility originally built in approximately 1970 as a barge cleaning and repair facility located on the Intra Coastal Waterway in Freeport, Brazoria County, Texas.
- Hercules purchased the facility from Fish Engineering in January 1989.
- Hercules conducts barge cleaning and degassing and barge repair work at this location as Hercules Marine Services Corporation. They also use this location as a land base for their offshore drilling business as Hercules Offshore Corporation. The parent corporation to the marine services company is Adway International Ltd. The corporate headquarters for Hercules is Houston, Texas.
- Numerous air nuisance complaints to local and state government against Hercules resulting in sporadic local press coverage since approximately 1990, and numerous complaint investigations resulting in unconfirmed nuisance conditions.
- Hercules is suing nearby resident Bob Casale for damaging business by numerous complaints and Casale is counter suing Hercules.

CASE SUMMARY

- Degassing or Cleaning Marine Vessels regulations under 30 Texas Administrative Code (TAC) 115.541-549 compliance date of November 15, 1996, required that degassing of a barge which last contained material with partial vapor pressure greater than 0.5 pounds per square inch be controlled by vapor control device and records be maintained.
- December 1996 State Implementation Plan air inspection conducted by TNRCC. Hercules facility manager Larry Ballinger told TNRCC inspector Hercules would comply with Barge Degassing regulations by not degassing barges of volatile material regulated by this Texas Clean Air Act rule until they hooked up their vapor control device.
- May 1997 Complaint Investigation concerning allegation that Hercules continued to degas barges that last contained cyclohexane, a volatile liquid which requires control due to the barge degassing regulations. Ballinger provides false records to indicate compliance. Accurate records obtained from barge operator BASF show 12 barges last containing cyclohexane were degassed at Hercules on eleven days from November 30, 1996, until April 27, 1997. The TNRCC Air Enforcement Section is pursuing administrative penalties against the corporation for failure to control emissions under the 30 TAC Chapter 115 Barge Degassing regulations for violations which occurred in February, March and April 1997.

CHARGES

- Eleven misdemeanor charges under Texas Health and Safety Code 382.091(a)(1)(E) for knowingly failing to control vapors as required under 30 TAC Chapter 115.
- Nine misdemeanor charges under Texas Health and Safety code 382.091(a)(3) for causing false records to be created that were required to be maintained under 30 TAC Chapter 115.
- One felony charge under Texas Penal code 37.09 for evidence tampering when Ballinger presented records he knew to be false to the TNRCC Investigator to affect the outcome of the TNRCC Complaint Investigation.

PROSECUTORIAL INTEREST

- Brazoria County District Attorney Jerome Aldrich has indicated through his staff that he will send the case to grand jury in Brazoria County for indictment and/or charging information to be filed and that he will support prosecution of this case.
- Brazoria County District Attorney's Office investigator Larry Bullard has been actively participating in the investigation and expects the case to be taken before the next Brazoria County grand jury which convenes in November 1997.

**TABLE I - TEXAS HEALTH & SAFETY CODE (THC)
TEXAS PENAL CODE (TPC) OFFENSES
HERCULES MARINE SERVICES CORPORATION
CASE NUMBER CR-FY97-058**

DATE	BARGE#	FAILURE TO CONTROL EMISSIONS THC 382.091(a)(1)(E)	FALSE RECORDS THC382.091(a)(3)	EVIDENCE TAMPERING TPC 37.09
11-30-96	ETT 110	X		
12-06-96	ETT 112	X	X	
12-17-96	ETT 115	X		
01-10-97	ETT 112	X	X	
02-9-97	ETT 110	X	X	
02-18-97	ETT 115	X	X	
02-22-97	ETT 113	X	X	
03-6-97	ETT 112	X	X	
	ETT114	X	X	
04-21-97	ETT 112	X	X	
04-23-97	ETT 113	X	X	
04-27-97	ETT112	X	X	
05-05-97				X

From: Max Turner
To: LEGALPO(PMELTON)
Date: 10/30/97 9:24am
Subject: conflict check -Reply -Forwarded -Forwarded -Reply

Patricia, these documents are still in the draft stage. I believe the APC recommended a Findings Order with Deferral. The recommended penalty is as indicated as well as the requirements to achieve compliance.

CC: DHenrich

DRAFT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Jimmy Jackson, Plant Manager
Hercules Marine Services Corporation
906 Marlin Avenue, P.O. Drawer O
Freeport, Texas 77541

Re: Notice of Enforcement Action
Account No. BL-0118-V
Docket No. 97-0575-AIR-E; Enforcement ID No. 11703
FOR SETTLEMENT PURPOSES ONLY

Dear Mr. Jackson:

The Executive Director of the Texas Natural Resource Conservation Commission ("Commission" or "TNRCC") is pursuing an enforcement action against Hercules Marine Services Corporation for violations of the Texas Health and Safety Code/Texas Water Code and Commission Rules. Specifically, we are addressing noncompliances with applicable laws and the requirements of Commission rules pertaining to air emission controls as documented by an inspection conducted on May 5, 1997. You were advised of these violations by letter dated June 16, 1997, from the TNRCC Houston Regional Office. Based on the violations documented during the inspection and the information obtained during the formal enforcement conference held May 13, 1997, the TNRCC has determined that this matter should be resolved through formal enforcement action.

Please find enclosed a proposed agreed order which we have prepared in an attempt to expedite this enforcement action. The order assesses an administrative penalty of Thirty Two Thousand Dollars (\$32,000). The order also details the noncompliance that we are addressing and any specific technical recommendations necessary to resolve these noncompliances.

If you have any questions regarding this matter, we are available to discuss them in a conference in Austin or over the telephone. If we reach agreement in a timely manner, the TNRCC will then proceed with the remaining procedural steps to settle this matter. These steps include publishing notice of the proposed order in the Texas Register, and scheduling the matter for the Commission's agenda. Please note that agreed orders are subject to final approval by the Commission. We believe that handling this matter expeditiously could save

Hercules Marine Services Corporation and the TNRCC a significant amount of time, as well as the expense associated with litigation.

If we cannot reach a settlement of this enforcement action or you do not wish to participate in this expedited process, we will proceed with enforcement under the Commission's Enforcement Rules, 30 Texas Administrative Code (Tex. Admin. Code) Chapter 70. If you would like to obtain a copy of 30 Tex. Admin. Code Chapter 70 or any other TNRCC rules, you may contact any of the sources listed in the enclosed brochure entitled TNRCC Rules. The enforcement process described in 30 Tex. Admin. Code Chapter 70 requires the staff to prepare and issue an Executive Director's Preliminary Report and Petition to the Commission. If the signed order and penalty is not mailed and postmarked within 60 days from the date of this letter, your case will be forwarded to the Litigation Support Division and this settlement offer, will no longer be available.

A copy of the order is provided for your files. Also enclosed for your convenience is a return envelope. If you agree with the order as proposed, please sign and return the original order and the penalty payment (check payable to "TNRCC" and referencing Docket No. 97-0575-AIR-E) to:

Financial Administration Division, Revenues
Cashier's Office, MC 214
Texas Natural Resource Conservation Commission
P.O. Box 13088
Austin, TX 78711-3088

Should you believe you are unable to pay the proposed administrative penalty, you may claim financial inability to pay part or all of the penalty amount. If this is the case, please contact us immediately to obtain a list of financial disclosure documents we will need from you. These documents, once properly completed and submitted, will be thoroughly reviewed to determine if we agree with the claim of financial inability. Please be aware that if financial inability is proven to the satisfaction of staff, discussions pertaining to the penalty amount adjustment will focus only on deferral and not on waiver of the penalty amount. The Commission will make the final decision on the staff recommendation."

You may be able to perform or pay for a Supplemental Environmental Project ("SEP"), which is a project that benefits the environment, to offset a portion of your penalty. Please contact us for additional information regarding SEPs.

For any questions or comments about this matter or to arrange a meeting, please contact Mr. Max Turner of my staff at (512) 239-1890.

Sincerely,

David R. Henrichs, Supervisor
Enforcement Team, Air Section
Enforcement Division

DRH/mat SIGNOR/originator

Enclosures: Proposed Agreed Order
File Copy
Return Envelope
TNRCC Rules

DRAFT

cc: Ms. Orbie Ratcliff, Jr., Air Program Manager, Houston Regional Office, TNRCC

bcc: DRH/MAT/ ___, Board, File
Ms. Rebecca Ohler, Houston Regional Office
Air - Region 12 File
Air - Expedited Order File
FA/Revenues Section (MC 214)

**IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING
HERCULES MARINE SERVICES CORPORATION,
ACCOUNT NO. BL-0118-V
ENFORCEMENT ID NO. 11703**

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BEFORE THE

TEXAS NATURAL RESOURCE

CONSERVATION COMMISSION

DRAFT

**AGREED ORDER
DOCKET NO. 97-0575-AIR-E**

At its _____ agenda, the Texas Natural Resource Conservation Commission ("the Commission" or "TNRCC") considered this agreement of the parties, resolving an enforcement action regarding Hercules Marine Services Corporation ("Hercules") under the authority of the Texas Clean Air Act, Tex. Health & Safety Code Chapter 382 ("the Act"). The Executive Director of the TNRCC, represented by the Enforcement Division, and Hercules represented by Mr. Bryan Domning of the law firm of Griggs & Harrison, presented this agreement to the Commission.

Hercules understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Hercules agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Hercules.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Hercules owns and operates a barge cleaning and repair plant located at 906 Marlin, Freeport, Brazoria County, Texas ("the Plant").
2. The Plant consists of one or more sources as defined in the Act § 382.003(12).
3. During an inspection on May 5, 1997, a TNRCC investigator documented eight barges were cleaned between February and April 1997 without the required control equipment.
4. Hercules received notice of the violations on June 18, 1997.
5. The Executive Director recognizes that Hercules has implemented the following corrective measures at the Plant in response to this enforcement action:

CONCLUSIONS OF LAW

1. Hercules is subject to the jurisdiction of the TNRCC pursuant to the Act and the rules of the Commission.
2. As evidenced by Finding of Fact No.3, Hercules cleaned eight barges between February and April 1997 without the required control equipment in violation of 30 Tex. Admin.. Code §115.542(b)(1) and the Act §382.085(b).
3. The Commission has the authority to assess an administrative penalty against Hercules for violations of the Act, TNRCC rules, or an order adopted under the Act pursuant to the Act § 382.088.
4. An administrative penalty in the amount of Thirty Two Thousand Dollars (\$32,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in the Act § 382.088(c). Hercules has paid Thirty Two Thousand Dollars (\$32,000) in administrative penalties.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION ORDERS that:

1. Hercules is assessed an administrative penalty in the amount of Thirty Two Thousand Dollars (\$32,000) for violations of the Act and rules of the TNRCC. The imposition of this administrative penalty and Hercules's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from considering requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be sent with the notation "Re: Hercules Marine Services Corporation, Docket No. 97-0575-AIR-E" to:

Financial Administration Division, Revenues
Attention: Cashier's Office, MC 214
Texas Natural Resource Conservation Commission
P.O. Box 13088
Austin, Texas 78711-3088

2. Hercules shall undertake the following technical requirements immediately upon the effective date of this order:
 - a. Operate a thermal oxidizer with blower equipment to achieve a control efficiency of at least 90% of the vapors released from the barge cleaning operation;

b. Obtain documentation from the barge owners or operators describing the last cargo to include chemical composition, vapor pressure at storage conditions, and initial boiling point; and

c. Maintain the documentation in "b" for a period of two years and shall make the information available to representatives of the commission, U.S. Environmental Protection Agency or any local air pollution control agency having jurisdiction.

3. The provisions of this Agreed Order shall apply to and be binding upon Hercules. Hercules is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Hercules fails to comply with any of the technical requirements in this Agreed Order within the prescribed schedules, and that failure is caused by an act of God, war, strike, riot, or other catastrophe, a penalty that would otherwise be imposed by the Act for a violation of the terms of this Agreed Order may not be imposed upon Hercules. Hercules has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Hercules shall notify the Executive Director within seven days after Hercules becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize the delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Hercules shall be made in writing to the Executive Director. Extensions are not effective until Hercules receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Hercules if the Executive Director determines that Hercules has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against Hercules in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of the Tex. Water Code or the Tex. Health & Safety Code.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the mailing date, as provided by 30 Tex. Admin.. Code § 70.10(b).

SIGNATURE PAGE

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Barry R. McBee, Chairman

I, the undersigned, have read and understand the attached Agreed Order in the matter of Hercules Marine Services Corporation. I am authorized to agree to the attached Agreed Order on behalf of Hercules Marine Services Corporation, and do agree to the specified terms and conditions.

I understand that by entering into this Agreed Order, Hercules Marine Services Corporation waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

Signature

Date

Name (printed or typed)
Authorized Representative
Hercules Marine Services Corporation

Title

I, the undersigned, on behalf of the Executive Director of the Texas Natural Resource Conservation Commission, hereby agree to the terms of this Agreed Order in lieu of an evidentiary hearing. This Agreed Order represents full and final adjudication of the violations giving rise to this Agreed Order.

Jim Phillips
Deputy Director
Office of Legal Services
Texas Natural Resource Conservation Commission

Date

Instructions: Send this signed, original Signature Page and Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Ordering Provision I of this Agreed Order.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWI SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTI ENDANGERMENT ORDER
CASE TYPE:		
<input type="checkbox"/> AGRICULTURE	<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WA
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONT

RESPONDENT: Hercules Marine Services Corporation

FACILITY LOCATION: Hercules Marine Services Corporation, 906 Marlin, Freeport, Brazoria County, Texas

DESCRIPTION OF OPERATION: Barge cleaning and repair

PREVIOUS ENFORCEMENT ORDERS:

OTHER SIGNIFICANT MATTERS:

INTERESTED PARTIES: No one other than the TNRCC and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The comment period expired (date). No comments were received by the Enforcement Division or the TNRCC Houston Regional Office as of (comment expiration date). Not Applicable.

CONTACTS AND MAILING LIST:

TNRCC Attorney: , Litigation Support Division, MC 175, (512) 239/None None

TNRCC Enforcement Coordinator: Max Turner, Enforcement Division, Compliance Section, MC 169, (512) 239-1890

TNRCC Field Investigator (or Regional Contact): Rebecca Ohler, Houston Regional Office, MC R-12, 713-767-3731

Local Program Investigator/Central Office Investigator: Rebecca Ohler, Investigator, TNRCC, 5424 Polk Avenue, Suite H, Harris, Texas 77023-1486/// , , , MC , (512) 239- None

Respondent: Mr. Jimmy Jackson, Plant Manager, Hercules Marine Services Corporation, 806 Marlin Avenue, P.O. Drawer O, Freeport

Respondent's Attorney: Not represented by Counsel/ Mr. Bryan Domning, Griggs & Harrison, 1301 McKinney, Suite #3200, Houston, TX 770103033

VIOLATION SUMMARY CHART FOR CURRENT CASE:

Initial Calculated Penalty Amount: \$		
Settled Penalty Amount Required to be Paid by the Order: \$28,000		
DESCRIPTION OF ALLEGED VIOLATIONS	PENALTY AMOUNT IN ORDER BEFORE COMMISSION	ACTIONS REQUIRED
<p>Date(s) of Inspection Report(s) or Record Review(s): 5/5/97 Date(s) of NOV(s): 6/16/97 Date of Initial Screening: 7/21/97 Penalty Policy: <input checked="" type="checkbox"/> Former Program Policy <input type="checkbox"/> October 1, 1997 Penalty Policy Alleged Violations Occurred Prior to September 1, 1997: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO EPA Significant Violator/Noncomplier: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A</p> <p>AIR/WATER/WASTE</p> <p>1) Failure 30 Tex. Admin. Code § 115.542(b)(1) and the Act §382.085(b). Hercules cleaned eight barges between February and April 1997 without the control equipment required by this rule.</p> <p>2) Failure 30 Tex. Admin. Code § 116.110(a) and the Act §382.085(b). Hercules loaded a barge with approximately 41,000 gallons of Anolon on March 7, 1997. This activity has not been authorized by a permit and has not been demonstrated to comply with a standard exemption.</p>	<p>Total Assessed: \$33,750</p> <p>Total Deferred: \$5,750</p> <p>Total Settled Penalty: \$28,000</p> <p>SEP Cost: \$0</p> <p>SEP Remittance: \$0</p> <p>The Respondent has paid the initial penalty installment of \$0. The remaining amount is to be paid in one installment of \$28,000 each. The deferral is contingent upon the Respondent's timely completion of the actions required to correct the alleged violations.</p>	<p>AIR/WATER/WASTE</p> <p>(List actions already</p> <p><u>Corrective actions</u> vapor pressures conditions until a oxidizer with blo operating to cont barge cleaning o</p> <p><u>Corrective actions</u> 1) When loading compound mixtu the inspection r performed and include the foll chemical comp conditions, and shall maintain th make such infor of the commissio having jurisdictio 2) In complianc compound or c loaded or unloa pressure is 0.5 conditions. 3) If organic liq meet the requir shall be obtaine</p>